



## **Summary Excerpts from JLARC Report**

At the June 28, 2006, CON Task Force meeting, the Joint Legislative Audit and Review Committee (JLARC) staff presented a report. It showed the recent results of the JLARC performance audit of the Department of Health's administration of the Certificate of Need program.

The Legislature, in ESSHB 1688, directed that this audit be performed by the JLARC Committee. The same legislation created the CON Task Force. The Legislature, in Section 3(3) of 1688, directed the Task Force to consider this report during the development of its recommendations on improving and updating the state's Certificate of Need Program.

Two sections of the Final JLARC Report have been attached for reference during the final discussion by the Task Force on August 16, including:

- Executive Summary, and
- Chapter Seven: Findings and Recommendations.

Please review these carefully to determine what recommendations you would like to make relative to the six JLARC recommendations.

# PERFORMANCE AUDIT OF THE CERTIFICATE OF NEED PROGRAM

REPORT 06-6

## REPORT DIGEST

JUNE 26, 2006



STATE OF WASHINGTON

JOINT LEGISLATIVE AUDIT AND  
REVIEW COMMITTEE

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## Background

In 1971, the Legislature created the Certificate of Need program in response to growing medical costs. Legislators were concerned about how the number and location of health care facilities and services affects health care costs.

The program reviews proposals for certain health care facilities and services before they can begin operation. Proposed projects are reviewed to ensure that they meet a community need, will provide quality services, and are financially feasible and will foster containment of health care costs.

From 2000 through 2005, Department of Health staff reviewed 156 applications. Of the 120 decisions reached and finalized by the end of 2005, **88 percent** were approved. Of these decisions, **30 percent** were appealed. Only two of those decisions have been overturned by a judge.

Engrossed Second Substitute House Bill 1688 (2005) directed the Joint Legislative Audit and Review Committee (JLARC) to conduct a performance audit of the Department of Health's (DOH) administration of the Certificate of Need program. The same bill created a task force to study and prepare recommendations on improving and updating the state's Certificate of Need program. The task force is to consider the results of JLARC's audit in developing its recommendations.

## Study Objectives

For this study, JLARC reviewed:

- The process for reviewing applications;
- The consistency of decisions with statute and with each other;
- How the agency monitors approved projects; and
- How the agency measures the performance of the program.

## Process and Timeliness

There are several steps in reviewing all Certificate of Need applications. Statute and rule define the amount of time that each major step should take. However, we found that the program is not consistently meeting deadlines established in statute and rule. The Department is not reaching decisions within statutory timeframes on 64 percent of applications.

## Consistency of Decisions

**Are decisions consistent with statute?** Statute lists the criteria that the Department of Health must use in making decisions. Certificate of Need program staff are fully applying several of these criteria, but there are also several criteria that program staff are only partially applying.

**Are program staff consistent in the types of analysis they are doing?** Program staff did not consistently cite the same data sources in their analyses of applications for similar facilities or services. However, some of those differences were due to the differences among the specifics of proposed projects. Additionally, more information is available from state agencies for facilities that are licensed by the state than facilities that are not.

**Are final decisions consistent with each other?** Since Certificate of Need program staff maintain limited historical electronic data on their analysis and final decision on applications and the specifics of proposed projects vary, it is very difficult to reach any conclusions about the consistency of those analyses and final decisions over time. In our review of individual applications, we did not see signs of inconsistencies in the final decisions on applications.

## Monitoring Approved Projects

Statute requires the Department of Health to monitor approved projects to ensure conformance with issued Certificates of Need, but program staff only monitor projects that are uncompleted, even if the Certificate of Need has not expired. A common condition on many Certificates of Need is for the facility to provide charity care, but since program staff do not monitor completed projects, they are unable to ensure that providers meet this requirement.

## Measuring Program Performance

The Department of Health's one performance measure for the Certificate of Need program is the timeliness of decisions, but this is not reported to the public. Program staff produce a monthly status report on current applications that they mail to subscribers for a fee, but do not make that report available on the program's webpage. This makes it difficult for the public to easily access information on the program.

## Recommendations

1. The Department of Health should identify strategies for meeting established statutory timelines for Certificate of Need applications.
2. DOH should identify strategies to ensure that all statutory criteria for reviewing Certificate of Need applications are fully applied. The Department may also recommend amendments to statutory criteria, if necessary, to reflect the state's current health care system.
3. The Legislature should consider establishing consistent basic reporting requirements for all services and facilities that are subject to Certificate of Need review so that information related to each type of application will be readily available and reliable.
4. To ensure ongoing consistency in both the analysis and final decisions for Certificate of Need applications, DOH should perform regular and ongoing reviews of program staff's application reviews and issued decisions.
5. DOH should revise its monitoring practices to include completed projects, as appropriate, to ensure applicants' compliance with issued Certificates of Need in accordance with statute.
6. DOH should better use the Certificate of Need program's website to make more information on program activities and application forms available to the public.

# CHAPTER SEVEN: FINDINGS AND RECOMMENDATIONS

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## Program Not Meeting Statutory Timelines

The Department of Health (DOH) is required by statute to screen an application within 15 working days, and reach a decision on an application within 90 calendar days from beginning of review. However, the Certificate of Need program is not consistently meeting those deadlines.

DOH is not meeting statutory timeframes for *screening* applications in 42 percent of applications. Additionally, we found that the Department is not *reaching decisions* on 64 percent of applications within statutory timeframes, even when factoring in a possible 30-day extension.

### **Recommendation 1**

**The Department of Health should identify strategies for meeting established statutory timelines for Certificate of Need applications.**

<b>Legislation Required:</b>	None to identify strategies, but may be required to implement strategies.
<b>Fiscal Impact:</b>	None to identify strategies, but may be required to implement strategies.
<b>Reporting Date:</b>	December 2006

## Not All Statutory Criteria Fully Applied by the Program

A set of **13 criteria** for reviewing Certificate of Need applications is established in statute. DOH's rules identify four basic criteria for reviewing applications. However, in implementing those criteria in rule, not all of the statutory criteria are fully applied by the program. There are three main issues here. First, program staff do not evaluate proposed projects according to all of the criteria established in rule to determine a proposed project's accessibility to all residents. Second, program staff focus their review of financial feasibility on the impact to the applicant and their patients, and not the costs to other providers in the community. Finally, the review of alternative options to the proposed project is limited.

### **Recommendation 2**

**The Department of Health should identify strategies to ensure that all statutory criteria for reviewing Certificate of Need applications are fully applied. The Department may also recommend amendments to statutory criteria, if necessary, to reflect the state's current health care system.**

<b>Legislation Required:</b>	None to identify strategies, but may be required to implement strategies.
<b>Fiscal Impact:</b>	None to identify strategies, but may be required to implement strategies.
<b>Reporting Date:</b>	December 2006

## Lack of Information about Unregulated Facilities

For certain types of projects, including hospital-based projects and nursing homes, Certificate of Need program staff are able to draw upon information from other state agencies and programs. This provides program staff with easily accessible, independent information to verify the information and arguments provided by the applicant as well as other members of the community. However, this level of information is not available for other types of projects, including ambulatory surgical centers, because these facilities are not licensed by the state.

### **Recommendation 3**

**The Legislature should consider establishing consistent basic reporting requirements for all services and facilities that are subject to Certificate of Need review so that information related to each type of application will be readily available and reliable.**

<b>Legislation Required:</b>	May be required.
<b>Fiscal Impact:</b>	Will be dependent upon the approach chosen by the Legislature.
<b>Reporting Date:</b>	None

## Inconsistencies in Analysis, but No Signs of Inconsistencies in Decisions

Since Certificate of Need program staff maintain limited historical electronic data on their analysis and final decisions on applications, it is very difficult to reach any conclusions about the consistency of those analyses and final decisions. Additionally, due to the limitations of JLARC staff's review and the large number of variables to consider, we are unable to definitively conclude whether or not decisions on Certificate of Need applications are consistent. Even with these limitations, there do appear to be some inconsistencies in the *analysis* of applications, but the *ultimate decisions* on applications do not appear to be inconsistent with one another.

### **Recommendation 4**

**In order to ensure ongoing consistency in both the analysis and final decisions for Certificate of Need applications, the Department of Health should electronically track program staff's application reviews and issued decisions, including the methods used in reviewing applications and the reasons for the final decisions. The Department of Health can then use this information to perform regular and ongoing reviews of decisions.**

<b>Legislation Required:</b>	None
<b>Fiscal Impact:</b>	JLARC assumes that this can be completed within existing resources.
<b>Reporting Date:</b>	July 2007

## Program Not Monitoring Completed Projects

Statute requires DOH to monitor approved projects to assure conformance with issued Certificates of Need. Program staff monitor uncompleted projects that have received Certificate of Need approval. However, they do not monitor completed projects for conditions of issued Certificates of Need that apply once a project is completed and begins providing services, even if the Certificate of Need has not expired.

### **Recommendation 5**

**In accordance with statute, the Department of Health should revise its monitoring practices to include completed projects, as appropriate, in order to ensure applicants' compliance with issued Certificates of Need.**

<b>Legislation Required:</b>	None
<b>Fiscal Impact:</b>	JLARC assumes that this can be completed within existing resources.
<b>Reporting Date:</b>	December 2006

### **Information on Program's Performance and Activity Not Available on the Internet**

DOH's one performance measure for the Certificate of Need program is the timeliness of decisions, but this is not reported to the public. Program staff produce a monthly status report on current applications that they mail to subscribers for a fee, but they do not make that report available on the program's webpage. This makes it difficult for the public to easily access information on the program. The program's application forms are also not on the Internet where they would be more accessible to applicants.

### **Recommendation 6**

**The Department of Health should better use its website about the Certificate of Need program to make more information and their applications available to the public. This information should include: (1) the application forms; (2) status reports on the program's activities; and (3) performance data for the program.**

<b>Legislation Required:</b>	None
<b>Fiscal Impact:</b>	JLARC assumes that this can be completed within existing resources.
<b>Reporting Date:</b>	December 2006

## **AGENCY RESPONSES**

We have shared this report with the Department of Health and the Office of Financial Management and provided them with an opportunity to submit written comments. Their written responses are included in Appendix 2.